

FILED 07 SEP 26 12:00 USDG-ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

DONALD ERNEST ALLEE,

06-CV-187-JE

Plaintiff,

OPINION AND ORDER

v.

OREGON DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

DONALD ERNEST ALLEE  
SID #11357146  
Snake River Correctional Institution  
777 Stanton Boulevard  
Ontario, OR 97914-8335

Plaintiff, *Pro Se*

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Attorneys for Defendants

**BROWN, Judge.**

This matter comes before the Court on Plaintiff Donald Ernest Allee's Motion for Reconsideration (#81) and Motion for Certificate of Appealability (#84). For the reasons that follow, the Court **GRANTS** Plaintiff's Motion for Reconsideration and, having reconsidered the merits of Plaintiff's arguments, the Court **DENIES** Plaintiff's request for the Court to alter or to amend its prior Order. The Court **GRANTS** Plaintiff's Motion for Certificate of Appealability.

#### **BACKGROUND**

Magistrate Judge John Jelderks issued Findings and Recommendation on May 31, 2007, in which he recommended the Court grant Defendants' Motion for Summary Judgment. On August 20, 2007, the Court issued an Order finding no basis to modify the Findings and Recommendation and adopting the Findings and Recommendation. On August 21, 2007, the Court entered a Judgment dismissing this matter with prejudice.

On September 6, 2007, Plaintiff filed a Motion for Reconsideration pursuant to Federal Rule of Civil Procedure 59(a)(2) seeking reconsideration of the Court's August 20, 2007, Order.

## DISCUSSION

### **I. Motion for Reconsideration**

#### **A. Standard**

Although Plaintiff moves for reconsideration pursuant to Rule 59(a)(2), that rule applies only to a request for new trial. Plaintiff did not have a trial in this matter nor does he request a "new trial." The Court, therefore, does not rely on Rule 59 as the standard for Plaintiff's Motion but instead applies the standard for reviewing general requests for reconsideration.

The disposition of a motion for reconsideration is within the district court's discretion. *See Bliesner v. Commc'n Workers of Am.*, 464 F.3d 910, 915 (9<sup>th</sup> Cir. 2006). Three major grounds justify reconsideration: (1) an intervening change in controlling law; (2) newly discovered evidence; or (3) the need to correct clear error or manifest injustice. *See Nunes v. Ashcroft*, 375 F.3d 805, 807 (9<sup>th</sup> Cir. 2004); *see also* Federal Rules of Civil Procedure 60(b).

*United States E.E.O.C. v. Scolari Warehouse Mats., Inc.*, CV No. 04-0229-DE-RAM, 2007 WL 1557934, at \*17 (D. Nev. May 23, 2007).

#### **B. Analysis**

In his Motion for Reconsideration, Plaintiff generally reiterates his previous arguments regarding his claims against Defendants for the alleged violation of his rights under the ADA and the Eighth Amendment. The Findings and Recommendation

thoroughly addressed Plaintiff's arguments. In addition, the Court reviewed the Findings and Recommendation, Plaintiff's Objections, and the relevant portions of the record *de novo*. The Court now adheres to the conclusions it reached in its August 20, 2007, Order adopting the Findings and Recommendation and, therefore, declines to amend its prior decisions.

## **II. Motion for Certificate of Appealability**

Plaintiff also requests a Certificate of Appealability in order to appeal this matter to the Ninth Circuit. Although Plaintiff's claims did not survive summary judgment, the Court concludes Plaintiff did not bring the claims in bad faith nor would Plaintiff's appeal be taken in bad faith. In addition, Plaintiff's appeal would not be frivolous.

Accordingly, the Court grants Plaintiff's Motion for a Certificate of Appealability.

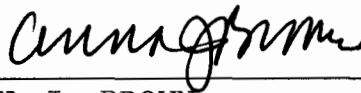
## **CONCLUSION**

For these reasons, the Court **GRANTS** Plaintiff's's Motion for Reconsideration (#81) and, having reconsidered the merits of Plaintiff's arguments, the Court **DENIES** Plaintiff's request for the Court to alter or to amend its prior Orders. The Court

**GRANTS** Plaintiff's Motion for Certificate of Appealability (#84).

IT IS SO ORDERED.

DATED this ~~24<sup>th</sup>~~<sup>25<sup>th</sup></sup> day of September, 2007.



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ANNA J. BROWN  
United States District Judge